IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3749 OF 2007

Shri Mohan Prabhakar Amre. ..Petitioner.

V/s.

Dr.Madhusudan Krushna Niglye & Ors. ..Respondents.

Mr.K.S.Dewal for petitioner.

Mr. P.N.Joshi for respondent Nos. 1 to 3.

Mr.M.P.S.Rao a/w. Mr.Limbardi Bommer for respondent No.4.

Mr.M.V.Limaye for respondent No.5.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 30, 2007.

P.C. :

1. Heard counsel for the parties.

2. Indeed, the trial Court in paragraph-4 of the impugned Order has adverted to the contention of the Petitioner that he is the owner of the suit property situated in Survey No.86(P). However, the trial Court has non-suited the Petitioner on the reasoning that the application preferred by the Petitioner is bereft of the material facts to support his claim; and moreso, no documentary evidence was produced by the Petitioner to substantiate his stand. In so far as that opinion recorded by the trial Court is

concerned, that cannot be doubted-as the application filed before the trial Court makes no specific reference as to how the Petitioner is owner of the suit property nor the application is accompanied by any documentary evidence to substantiate that stand. Be that as it may, the Petitioner in the present Petition has specifically averred that he had filed application under Order 1 Rule 10 for impleading him as a party being owner of the suit property. Besides, the Petitioner is relying on the documentary evidence to substantiate his claim that he is the owner of the suit property. The appropriate course as suggested by the Counsel for the original Plaintiff, which argument I am inclined to accept, is that, the Petitioner may be given liberty to file fresh application before the trial Court setting out all the material facts in support of this case and to substantiate the same before the trial Court at the hearing of the application.

3. Accordingly, this Petition is disposed of with liberty to the Petitioner to make fresh application before the trial Court, as may be advised, which will have to be decided on its own merits in accordance with law, uninfluenced by any of the observations in the impugned Order.

4. The Petitioner assures to file such application within two weeks from today. If such application is filed, the trial Court may dispose of the same finally as far as possible within four weeks from its presentation.

5. Petition disposed of on the above terms.

(A.M.KHANWILKAR,J)